

# A947 Multi-Modal Corridor Study

Outline Business Case – Commercial Case

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Quality information

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# 1. The Commercial Case

## 1.1 Introduction / Commercial Approach

The Commercial Case provides evidence on the commercial viability of the scheme proposals, setting out commentary on the proposed procurement strategy that is to be used to bring the A947 Multi-Modal Corridor Study package of improvements to market.

Understanding the commercial viability of the investment is the first step in ensuring due diligence for deliverability of any programme of works. This chapter therefore seeks to provide the necessary evidence that the proposed works for the corridor can be procured and delivered in a viable and sustainable way.

This chapter has been prepared pre-procurement, to provide information on the range of options available to Aberdeen City Council (ACC). No formal decisions on the proposed procurement route have been determined by the Council at this stage. Rather, it is intended that the proposed route to market is further reviewed, alongside additional design definition for the package of measures post-Outline Business Case (OBC) submission.

## 1.2 Output-Based Specification

The output-based specification defines the functional requirements for the package. At this stage, it concentrates on the outputs to be delivered. This section also includes the identification of a series of draft outcomes, objectives and key success criteria from which the suitability of the commercial approach can be reviewed.

### 1.2.1 Procurement Outputs: Scope of Services

As set out in the Socio-Economic Case, a final OBC package was compiled, consisting of a range of individual measures along the study corridor, focusing on active travel improvements and other supporting measures. Whilst the specific proposals are still subject to development and approvals (including funding), the current elements to be sourced from the market include:

- Design and construction services for a range of measures along the A947 corridor, including:
  - Improved active travel links including new footways and widening of existing provision, new or formalised pedestrian crossing points, segregated cycle lanes and improved on-road facilities.
  - Implementation of active travel improvements to develop a mixed traffic street on the local network west of the A947, incorporating Bankhead Road, Greenburn Road and Millhill Brae.
  - Implementation of shared use path on Dyce Drive between the A947 and Kirkhill Industrial Estate to the north of Aberdeen International Airport.
  - Traffic management interventions including one-way highway restrictions for general traffic on Victoria Street.
  - Review of active travel provision throughout the study area, including gaps in footway provision and wayfinding.
  - Review of various highway junctions to improve safety for highway users and cyclists.
  - Review of on-street parking arrangements.

- Professional and technical services in support of the above, to cover the following disciplines:
  - Civil and structural engineering services.
  - Environmental.
  - Cost planning.
  - Legal.
  - Multi-modal consultant specialists.
  - Highways, traffic and transport engineering.
  - Public / stakeholder engagement and communication.
  - Project management.
  - Any other professional or other services that may be required to design and construct the project to meet the Client requirements.

It is also expected that the appointed contractor(s) will have the ability to deliver all aspects acting as Principal Contractor under Construction Design Management (CDM) regulations, whether through the use of in-house resources or robust arrangements for selecting and managing sub-contractors or partner organisations.

It is recommended that the output-based specification is further developed into a detailed specification pack, following a final determination on the package and confirmation of funding. Funding for the scheme has not yet been confirmed, however the OBC will provide the basis for the scheme to be considered for future funding opportunities. The preferred package will therefore need to be refined in relation to the source and level of funding available and following further consultation and internal approvals. The detailed specification pack should be developed to de-constrain future tender responses and enable bidder(s) to promote innovative solutions in design, construction, maintenance, and renewal. This will help to optimise the delivery model, improving whole life cost and the value for money of the package.

## 1.2.2 Procurement Outcomes

It is anticipated that the project should address the following draft outcomes:

- To deliver a procurement strategy that enables enhancements to active travel provision on the A947 Multi-Modal corridor to increase the level of walking, wheeling and cycling in accordance with the TPOs identified in the Strategic Case.
- Support delivery of the ACC, Aberdeenshire Council and the Highland Council Joint Procurement Vision “*to deliver innovative, cost effective and high-quality strategic procurement services that maximise best value from all commercial relationships, exploit new opportunities, while ensuring a robust and effective governance framework in support of the wider strategic, financial and operational needs of the individual Councils and their partners.*”
- Development and delivery of a compliant business case and procurement strategy for the A947 Multi-Modal corridor, that meets local assurance requirements as well as national Scottish Transport Appraisal Guidance (STAG) guidance.
- Support the Scottish Government Infrastructure Investment Plan to drive ambitious infrastructure investment projects, create jobs, help businesses, and support delivery of growth in the Scottish economy.
- Secure full commitment to procurement strategies by key stakeholders, ensuring they are consulted and involved in relevant procurement decision making from the option development stage to planning stage through to full project delivery.
- Maximise efficiencies in design, delivery and operation.
- Provide ‘best value’ for the public purse, pursuing a procurement strategy that addresses the root cause of the transport challenges on the A947 transport corridor to promote value for money.

### 1.2.3 Procurement Objectives

The draft objectives for the procurement / contracting approach are set out below:

- Avoidance of fraud and corruption.
- Ensure 'Best Value' is delivered.
- Offer of an affordable 'whole life' cost.
- Compliance with current legislation and relevant Scottish Government governance policies, processes and procedures to deliver green, inclusive recovery and longer-term well-being.
- Ensure the procurement strategy supports Scottish Government policy to decarbonise the transport network by 2045, together with other environmental policies and procedures. This includes ensuring that Climate Change and Circular Economy considerations are at the heart of all procurement activities.
- Support sustainable, inclusive economic growth (as identified in the Scottish Procurement and Property Directorate Vision and the ACC, Aberdeenshire Council and the Highland Council Joint Procurement Strategy).
- Identify leverage opportunities (including social, economic and environmental value) aligned to the needs and priorities of our communities.
- Maximise opportunities for the local supply chain, small, medium-sized enterprises (SMEs) and the third sector to the full extent permitted by law.
- Delivery of a programme of works within an available funding envelope, determined by the source and level of funding received.
- Identification of specific procurement / contracting approaches for each element of the scope to manage, in accordance with the ACC Risk Appetite Statement and the ACC, Aberdeenshire Council and the Highland Council Joint Procurement Strategy, impacts on service quality, affordability and value for money.

### 1.2.4 Procurement Key Success Criteria

Draft key success criteria against which the suitability of the procurement / contracting options for the project may be judged include:

- Suitability.
- Technical and Professional Ability.
- Economic and Financial Standing.
- Price Certainty.
- Timing.
- Risk Management.
- Environmental Management Standards.
- Quality Assurance.

It is recommended that draft outcomes, objectives and key success criteria discussed above are reviewed alongside the emerging requirements and procurement strategy for the A96 Inverurie to Aberdeen corridor study, the A944/A9119 Westhill to Aberdeen corridor study, the A90/A92 Aberdeen to Laurencekirk corridor study, the A92 Bridge of Don to Bridge of Dee corridor study, the Ellon Park & Ride to Garthdee corridor study and the A93 Peterculter to Aberdeen City Centre corridor study – and the continuing development of the business case for Aberdeen Rapid Transit (ART). This reflects there may be efficiencies / opportunities to streamline procurement activities across the broader programme, given synergies in scope and interdependencies between projects, and common aims and objectives.

The outcomes, objectives and key success criteria are to be confirmed (as appropriate) with the ACC Head of Procurement at the next stage.

## 1.3 Procurement Strategy

The draft procurement strategy acknowledges that there will be a need to follow an open, fair and transparent process that is developed in full compliance with the Public Contract Regulations (2015), which are the rules governing UK procurement.

Furthermore, the strategy respects that all procurement will be subject to ACC's constitution, policies and procedures relating to procurement, including the Joint Procurement Strategy between ACC, Aberdeenshire Council and The Highland Council (2017-2022)<sup>1</sup>.

The procurement strategy has also been developed in accordance with the detailed local procurement manual and guidance note, PGN 10 Sustainable Procurement Policy<sup>2</sup>.

### 1.3.1 Procurement Roles

ACC is the Promoter and Lead Contracting Entity, responsible for overseeing the procurement of design and construction services for most elements of the project.

To date, ACC has commissioned consultancy support to design and develop a STAG-based appraisal of the options to satisfy this OBC, procured via Lot 2 - Scotland Excel Engineering and Technical Consultancy Services Framework.

A scheme funder has not been identified.

### 1.3.2 Contracting Approach

The procurement strategy recognises that there are many permutations available with respect to how ACC as the Lead Contracting Entity may progress procurement of design and construction services. This may include a traditional approach, or design and build contracting approach.

#### Option 1: Traditional procurement, construction, separate maintenance

ACC would complete a full detailed design for the A947 Multi-Modal Corridor Study. It is expected that this would be through separate procurements tendered via Scotland Excel or equivalent frameworks (discussed separately within the sourcing options section of this chapter). This would be followed by a separate tendering exercise for a contractor(s), who is passed the design to construct.

#### Option 2: Design and build construction, separate maintenance

ACC would submit a tender specification for the design developed to date, or at an agreed level of maturity post-OBC submission – i.e. outline design (to be agreed as applicable) and pass it direct to the contractor(s) to tender for the detailed design and construction phases as a single procurement.

#### Emerging Preferred Contracting Option

The choice of contracting mechanism will depend on a more detailed understanding of risk, risk allocation and transfer, and the relative advantages and disadvantages of each route to achieve the required objective of containing cost to within the funding envelope.

Ordinarily, cost certainty is highest with traditional (Design, Bid and Build); however, this option can result in elements of design risk remaining with the Council. Design and build provides a medium level of cost certainty but this must be balanced against the ability of the contractor(s) to identify efficiencies during the design stage and a reduced level of design risk remaining with the Council.

Whilst both options remain available to ACC, the current assumption is that the project would be progressed via the traditional route (Option 1), with the Council procuring the design and build stages separately. This enables the Council to keep ownership of the design in-house. This aligns with recent project experience for similar infrastructure projects delivered in Aberdeen.

Within the context of the above, it is separately noted that there is also scope to consider Early Contractor Involvement during outline design phases. Such an approach would enable the Council to

<sup>1</sup> <https://www.aberdeencity.gov.uk/sites/default/files/2019-01/Joint%20Procurement%20Strategy.pdf>

capitalise on industry construction / delivery experience without necessarily committing to engaging with the same contractor(s) for design and/or build.

It is expected that a New Engineering Contract (NEC) 4 will be used to deliver the project proposals. The exact option is to be specified; as NEC is endorsed by governments and industry bodies it is considered the most appropriate, with the Councils having a proven track record managing and administering projects using this contract.

### 1.3.3 Packaging of Outputs

The procurement strategy acknowledges that there is a need to determine whether future works for the project are to be procured as a single package or multiple workstreams / contractors. For instance, a number of options have been considered:

- Option 1: Procurement of design and construction services as a single workstream covering all intervention types.
- Option 2: Procurement of design and construction activities taking account of the programme timings for individual elements. For instance, there may be an opportunity to package early phasing as a separate commission (incremental versus full delivery).
- Option 3: Procurement of design and construction services by risk / complexity (structures / utilities etc.).
- Option 4: Procurement of design and construction activities in collaboration with a wider programme. This option provides the opportunity to procure multiple project elements to generate efficiencies.

#### Emerging Preferred Package Option

Whilst all options remain available, based on lessons learned, to enable the effective management of the inter-relationships between work requirements for the A947 transport corridor, including wider network effects, it is recommended that design and construction services are procured as a single workstream; rather than pursuing opportunities to break down the key improvements, and supporting measures by intervention type, programme and/or complexity.

## 1.4 Sourcing Options

The final sourcing strategy is to be developed in accordance with the detailed local procurement manual and guidance note, PGN 22 Sourcing Strategy.<sup>3</sup> The following provides an overview of the opportunities considered to date for further project development and eventual delivery of the package of measures.

### 1.4.1 Future Project Development Activities

It is expected that project development activities are tendered via the Scotland Excel Framework Lot 2 - Engineering and Technical Consultancy Services Framework. This provides consistency with the approach undertaken to date, aligns with ACC corporate project experience and maximises the opportunity to use trusted and experienced contractors, whilst also delivering a value for money option.

### 1.4.2 Delivery

Two core sourcing options have been identified for the delivery stage as follows:

#### Option 1: Competitive Procurement

For a package of works of this scale, the Council may choose to tender using one of six competitive procurement procedures including Open, Restricted, Competitive Dialogue, Competitive Procurement with Negotiation, Innovative Partnership or Negotiated Procedure without prior publication. Of these, the most appropriate option available to the Council is a 'Restricted Procedure'. This reflects there is likely to be a number of suppliers interested in the opportunity and will enable the procurement approach to limit the number of bidders at the invitation to tender (ITT) stage to those with the best

<sup>3</sup> Aberdeen City Council, Aberdeenshire Council and The Highland Council. Joint Procurement Strategy, 2017 – 2022



capacity and capability to meet the contract requirements. This seeks to ensure unnecessary time and resource is not wasted by the bidder and the Council in completing and assessing the tender responses. A summary of the 'Restricted Procedure' process is set out below:

- Three stage procurement activity, advertised on Public Contracts Scotland (PCS).
- Stage One – Exclusion Grounds (mandatory and discretionary): an initial pass/fail evaluation of grounds relating to criminal convictions, payments of taxes or social security contributions, blacklistings and insolvency, conflicts of interest or professional misconduct.
- Stage Two – Minimum requirements: an initial pass/fail evaluation of the legal eligibility, economic and financial standing, and technical and professional ability of bidders to deliver the works.
- Stage Three – Selection: Shortlisted bidders from Stage One and Two provided the formal ITT documentation and invited to participate in the Restricted Tender Process.

## **Option 2: Public Sector Procurement Frameworks**

There are several standard public procurement portals that can be used for the procurement of infrastructure works such as (but not limited to):

- SCAPE Scotland: public sector procurement route offering with suite of direct award construction, consultancy and civil engineering compliant frameworks for the built environment. This includes the SCAPE Scotland Construction (Project Value +£7.5m) framework; and Civil Engineering (Project Value £50k to £100m) framework which may be considered for this commission. Engagement with the framework holder may commence at the feasibility, pre-construction or delivery stage.
- PAGABO Scotland: public sector procurement route with options of a Major Works Framework (Project Value +£5m) and Civil and Infrastructure Framework (Project Value +£500k) that may be considered for the proposed works. The Major Works Framework offers the opportunity for further competitive bidding, or direct award to 25 national contractors across three lots; whilst the Civil and Infrastructure Framework includes 49 contractors across 4 lots.

## **Emerging Preferred Sourcing Option**

Whilst all options remain available to the Council, the current assumption is that a Restricted Competitive Procedure (Option 1) would be adopted for the project. ACC has recently deployed this approach successfully on the South College Street Junction Improvements (Phase 1) project. ACC have limited experience in the use of national frameworks for delivery of civils and infrastructure projects (such as SCAPE Scotland, PAGABO etc.). The Council has recently delivered community-based infrastructure using the Hub North Scotland partnership; however, this is not suited to this project. The preferred sourcing option will be confirmed following a full option assessment approach undertaken post-OBC submission.

## **1.5 Human Resources Issues**

It is unlikely that there will be any TUPE (Transfer of Undertakings [Protection of Employment] Regulations) issues for the A947 Multi-Modal Corridor Study.

## **1.6 Risk Allocation and Transfer**

### **1.6.1 Managing Risk**

To achieve successful delivery of the A947 Multi-Modal Corridor Study, management policies, processes and procedures are required to be followed accurately. An important aspect of the management process is identifying risks associated with delivery and funding early in the process, in accordance with the ACC Risk Management Strategy, to allow mitigation to be identified. The risks associated with the project have been considered and are discussed in the Management Case.

## 1.6.2 Risk Appetite

The ACC Risk Appetite Statement sets out how the Council balances risks and opportunities in pursuit of delivering the outcomes set out within the Local Outcome Improvement Plan and associated strategies.

The Risk Appetite Statement is a key element that supports the Council's Project of Governance and provides guidance when decisions are made by Full Council, committees and sub-committees within their Terms of Reference, and officers under the Powers Delegated to Officers. This includes procurement decisions, relating to contractual principles associated with risk allocation and transfer (such as those required for this project).

The Council aims to promote a 'risk aware' culture and recognises that whilst it may be desirable to avoid risks it must also accept risks in order for the Council to evolve and achieve its ambitions. Being risk aware, the Council will be mindful of both threats and opportunities and apply their corporately agreed risk management methodology, to determine an allocation of risk best placed to deliver improved outcomes for the project.

ACC is averse to risks associated with impairing financial stewardship, internal controls, and financial sustainability. The Council has an open appetite for short-term risks that support financial performance and mitigate negative external factors. It also has an open appetite for longer term capital and financial investments provided that the risks are well managed and demonstrate realisable future benefits for delivering the Council's outcomes and commissioning intention.

As part of the Commercial Case, the general principle that will be adopted is that the risks should be managed by the party best able to manage them. A strategic aim and objective of the procurement strategy and management of the contract is that risk is appropriately proportioned through the careful management of relationships within, and throughout the project. This is also important from a delivery and resilience point of view.

## 1.6.3 Risk Transfer to the Contractor

Through the NEC contract, each option allocates risk differently between the Employer and the Contractor resulting in a sliding scale of risk allocation. The contract conditions are designed to encourage a collaborative relationship. The contract option, risk allocation and transfer allocation has yet to be confirmed – this is a key next step.

At this stage, all risks are held by ACC as the project promoter.

As part of the development of the Full Business Case (FBC) stage, the risks will be reviewed and measured in a full quantified cost risk register (QCRA), including commercial / procurement related risks. This will include the allocation of risks to respective parties. This work will be reported within future iterations of the Commercial Case (subject to commercial in confidence considerations).

## 1.7 Contract Length

The individual contract(s) durations will be dependent on the final procurement strategy deployed for the project. The Management Case provides an overview of the proposed delivery programme.

## 1.8 Payment Mechanisms

Payment mechanisms will be dependent on the individual contract implemented to take forward the project. At this stage, discussions regarding payment mechanisms to be negotiated with the relevant providers are not suitably mature to articulate within this OBC (i.e. any payment mechanisms linked to performance and availability, providing incentives for alternative revenue streams payment mechanisms). This requires confirmation of the contracting approach, as an early deliverable within the FBC stage.

## 1.9 Pricing Framework and Charging Mechanisms

No specific market engagement has been undertaken with contractors regarding the proposed project, and as a result, the potential pricing framework and charging mechanisms.

Whilst such engagement has not been undertaken to date, it is envisaged the pricing framework and charging mechanisms for capital work contracts will be in accordance with Council standard suite of contracts for the next stage of development works (as appropriate).

Further specific detail on the pricing framework and charging mechanisms, including consideration of incentives, deductions and performance targets will be presented as part of the FBC stage, aligned with decision making requirements associated with the proposed procurement and contracting approach.

## 1.10 Contract Management

Contract management is the process of effectively managing and governing contracts to ensure they deliver maximum operational and financial value and improve compliance whilst mitigating service delivery risk over the life of the contract. Contract management focuses on realising the full anticipated value of the contract and managing contract changes.

Contract management requirements will be developed in accordance with the detailed local procurement manual and guidance note, PGN 18 Contract Management<sup>4</sup>.

The operation of contract management will reflect the contract type. Contract management requirements will therefore be aligned to the specific contract identified at the next stage. It is anticipated that the NEC 4 form of contract will be used for the project.

Project Controls will be in place including regular reports on the key deliverables from the supply chain. Reporting requirements are separately identified within the Management Case.

The approach taken for this project will be focused on enabling a collaborative, innovative, value adding relationship with the appointed supplier(s), whilst ensuring that contractual obligations are met, and supply chain risks are effectively managed. Arrangements for the contract management are anticipated to be defined by the following principles:

- Operate the contract management in a spirit of mutual trust and co-operation.
- Ensure that the whole project team operate the contract management professionally and work well together and take any appropriate action.
- Operate with a defined project scope, objectives and constraints.
- Planning of the project, at an appropriate level.
- Monitoring progress against the plan, in terms of both time, quality and budget.
- Risk and issue management, utilising the contract mechanisms for early warning; with mitigation and escalation as appropriate.
- Ensure that appropriate quality work is being carried out – this will include targeted evaluation, measuring and monitoring of performance.
- Devise corrective actions for problems.
- Inform and advise relevant Boards (as set out within the governance section of the Management Case) of progress and potential problems, along with mitigation.

A suitably qualified and experienced project and commercial management team will be allocated to manage all contractual requirements, including response times and quality assurance.

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<sup>4</sup> Aberdeen City Council, Aberdeenshire Council and The Highland Council. Joint Procurement Strategy, 2017 – 2022

